

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>KENNETH NEWKIRK,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 7:23cv00623</b>
	)	
<b>v.</b>	)	<b>OPINION</b>
	)	
<b>LT. K. M. FLEMING, et al.,</b>	)	<b>By: Robert S. Ballou</b>
<b>Defendants.</b>	)	<b>United States District Judge</b>

Plaintiff Kenneth Newkirk, a Virginia inmate proceeding *pro se*, filed this civil action under 42 U.S.C. § 1983 against multiple defendants, alleging numerous different causes of action. Newkirk did not pay the applicable filing fee when he sent in his complaint, and court records indicate that he has had more than three prior actions dismissed as frivolous or for failure to state a claim upon which relief may be granted.<sup>1</sup>

Under the three strikes provision of the Prison Litigation Reform Act (PLRA), Newkirk may not proceed with a civil rights action unless he either prepays the entire filing fee or credibly shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). He has not paid the filing fee, nor has he alleged facts constituting imminent danger of physical injury. The proper procedure is for the district court to dismiss the complaint without prejudice when the plaintiff is ineligible to proceed *in forma pauperis* and fails to pay the full filing fee up front.

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<sup>1</sup> See *Newkirk v. Shaw, et al.*, No. 3:14CV171-HEH, 2014 WL 6712888, at \*6 (E.D. Va. Nov. 26, 2014); *Newkirk v. Shaw*, No. 3:14CV426-HEH, 2014 SL 4161991, at \*3 (E.D. Va. Aug. 19, 2014); *Newkirk v. Cir. Ct. of the City of Hampton*, No. 3:14CV372-HEH, 2014 WL 4072212, at \*3 (E.D. Va. Aug. 14, 2014); *Newkirk v. Lerner*, No. 3:13CV364-HEH, 2014 WL 587174, at \*5 (E.D. Va. Feb. 14, 2014); *Newkirk v. Chappell*, No. 3:13CV73-HEH, 2013 WL 5467232, at \*3 (E.D. Va. Sept. 30, 2013).

Newkirk is further advised that his complaint appears to violate Rules 18 and 20 of the FEDERAL RULES OF CIVIL PROCEDURE by misjoining multiple claims against different defendants in a single suit. One purpose of the PLRA is to deter “frivolous prisoner litigation by instituting economic costs for prisoners wishing to file civil claims.” *Lyon v. Krol*, 127 F.3d 763, 764 (8th Cir. 1997). The rules against joining separate claims against different parties promotes the purposes of the Act by preventing prisoners from avoiding the fee obligation and the three-strike provision. *Green v. Denning*, 2009 WL 484457 at \*2 (D. Kan. Feb. 26, 2009). Separate claims against different people must be filed in separate complaints, accompanied by the appropriate filing fee for each.

Because Newkirk already has more than three strikes and has not prepaid the filing fee, I will dismiss his complaint without prejudice under 28 U.S.C. § 1915(g). An appropriate order will be entered.

Enter: December 18, 2023

*/s/ Robert S. Ballou*

Robert S. Ballou  
United States Magistrate Judge